

NOV 23 2001

DISTRICT OF COLUMBIA
DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Banking and Financial Institutions, pursuant to the authority set forth in Mayor's Order 2001-91, dated June 22, 2001, and Section 1406 of the Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000, effective April 3, 2001 (D.C. Law 13-263; 48 DCMR 991) ("Act"), hereby gives notice of the adoption of the following amendment to Title 26A DCMR, "Banking and Financial Institutions" which adds a new chapter, "Chapter 20 Real Estate Finance and Predatory Lending". Final action to adopt these rules was taken on November 14, 2001. No changes have been made to the text of the proposed rules, as published with the Notice of Proposed Rulemaking in the D.C. Register on October 12, 2001, 48 DCMR 9359. These final rules will be effective upon publication of this notice in the Register.

CHAPTER 20

REAL ESTATE FINANCE AND PREDATORY LENDING

2000

SCOPE

2000.1

Unless specified otherwise, these regulations shall govern the creation, making, brokering, arranging, funding, administration, servicing, release, enforcement, foreclosure, and auditing of real estate loans and predatory lending protections in the District of Columbia, as governed by the Act, including the Mortgage Foreclosure Auditing Program administered by the Department of Banking and Financial Institutions ("Department") as provided in §§ 2000.2, 2000.3, and 2000.4.

2000.2

The provisions contained in sections 205, 216, 222, 223, 224, 226, 230, 231, 232, 301, 307(b), 505, 601, 602, 603, 604, 701, 702, 704, 705, 706, 707, 801, 802, 901, 902, and 903 of the Act shall apply to all real estate loans made in the District for which the application for the loan was submitted or accepted on or after September 1, 2001.

2000.3

The provisions contained in the Act, other than the provisions referenced in § 2000.2, shall apply to all foreclosures of real estate loans made in the District for which the Notice of Commencement of Foreclosure has been recorded in the Recorder of Deeds on or after October 1, 2001.

2000.4

Section 101 of the Act shall be effective beginning on September 1, 2001.

2000.5 The Act requires the completion of forms or other documents for certain activities covered by the Act. Those requirements may be satisfied through the use of the authorized forms included herein.

2001 HOME LOAN; HOME LOAN ADJUSTED RATE; AND HOME LOAN REFERENCE RATE

2001.1 The term "home loan" as defined in Section 101(12) of the Act, identifies those real estate loans secured by residential lien instruments encumbering residential real property that will be subject to the predatory lending provisions in Sections 601 through 604 of the Act and may be subject to the expedited hearing provisions in Sections 801 and 802 of the Act and the judicial foreclosure provisions in Sections 701 through 707, 901, 902 and 903 of the Act.

2001.2 A loan shall qualify as a home loan if:

- (a) The owner of the residential real property securing the loan is one (1) or more individuals;
- (b) The residential real property securing the loan is improved with a one (1) to four (4) family dwelling;
- (c) The residential real property securing the loan is occupied by the Owner as his principal dwelling; and
- (d)(1) If the primary purpose of the loan is for any combination of purchasing, refinancing, or additional financing of property or improving an existing structure on property, the
 - (A) Principal amount of the note secured by a first lien does not exceed the current Freddie Mac/Fannie Mae conforming loan limit; or
 - (B) Sum of the principal amount of note secured by a subordinate lien other than a first lien, plus the sum of the unpaid balances of all other senior priority liens for any combination of purchasing, refinancing, or additional financing of property or improving an existing structure on property does not exceed the current Freddie Mac/Fannie Mae conforming loan limit for first lien conventional loans; or
- (2) Where the assessed value of the owner's principal dwelling encumbered by the lien instrument is one million dollars (\$ 1,000,000) or less; and

NOV 23 2001

(A) The loan is evidenced by an obligation other than a note, e.g., a guaranty, indemnity, or surety bond;

(B) The loan is secured by liens on real property or personal property in addition to real property and related personal property which is the owner's principal dwelling, e.g., the residential lien instrument secures additional collateral for a loan secured by other real or personal property; or

(C) The owner of the residential real property is a co-maker, accommodation party or guarantor of a note which proceeds are advanced for a primary purpose other than the purchase, additional finance, refinance or improvement of the property and related personal property.

2001.3 The failure to satisfy any one of the four (4) primary elements shall prevent a loan from being a home loan. A loan secured by a lien encumbering the owner's principal dwelling that serves as security or additional security for another loan or a commercial loan may be a home loan.

2001.4 The following types of loans shall not be considered a home loan even if the loan meets all of the four (4) primary elements of § 2001.2:

- (a) A home equity conversion mortgage or a reverse mortgage;
- (b) A construction loan for the initial construction of one (1) or more single-family dwellings;
- (c) A loan secured by a purchase money lien instrument encumbering the owner's principal dwelling;
- (d) A loan secured by the owner's principal dwelling, where the primary purpose of loan is for refinancing or additional financing with or without improving the owner's principal dwelling and where the "home loan adjusted rate" is equal to or less than the "home loan reference rate," excluding any loan where the first interest rate adjustment or principal and interest payment amount adjustment is permitted before the fifth anniversary of the date of the note. However, any "adjustable rate mortgage" where the first interest rate adjustment or principal and interest payment amount adjustment is permitted before fifth anniversary of the date of the note cannot qualify for this exemption;
- (e) A first lien loan and second lien loan created simultaneously in the same transaction and secured by the owner's principal dwelling, where the primary purpose of loan is for refinancing or additional financing with or without improving the owner's principal dwelling and where the average

NOV 23 2001

- (i) A loan which is a home equity line of credit loan, commonly referred to as a "home equity loan," where the principal amount can be re-advanced, that satisfies all the following conditions:
 - (1) The deed of trust or mortgage is a credit line deed of trust, as defined in Section 2(1) of the Real Property Credit Line Deed of Trust Act of 1987, effective January 28, 1988 (D.C. Law 7-67; D.C. Code § 42-2301 *et seq.* (2001 ed.)) ("Deed of Trust Act"), for single family residential property, as defined in Section 2(3) of the Deed of Trust Act, and complies with the notice requirements in Section 3 of the Deed of Trust Act;
 - (2) No "origination/discount points and fees," as defined in Section 101(29A) of the Act, were charged to any borrower or owner of the residential real property; except the following charges are expressly excluded from this limitation, *i.e.*, (a) any transfer and recordation taxes applicable to the residential lien instrument, (b) any charge described in subsection (i), (iii), (iv), or (v) of section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, and (c) a loan origination, document preparation, underwriting, or processing fee, however designated, that does not exceed the greater of (I) one percent (1%) of the total home equity loan amount, or (II) five hundred dollars (\$500) or such greater amount established by the Mayor by regulation;
 - (3) The home equity loan is prepayable at any time without additional cost, fee or premium; provided, that a lender which did not collect all of the charges for creating the home equity loan allowed in clause (ii) above, shall not be prevented from collecting some or all of those charges if the borrower voluntarily terminates the home equity loan before thirty-six (36) months after the creation of the home equity loan; and
 - (4) Interest on the home equity loan accrues and is charged only on the unpaid principal balance, calculated daily;
- (j) A loan, commonly referred to as a "bridge loan", that satisfies all of the following conditions:
 - (1) The note evidencing the bridge loan is secured by a single residential lien instrument or two (2) residential lien instruments that encumber at all times two (2) residential real properties, one of which is purchased by the borrower simultaneously with the funding of the loan and is located in the District of Columbia;

- 2003.5 The person who completes Form 205(b) General shall promptly provide copies of the completed form to each person related to the residential lien instrument and/or residential real property upon receiving a request from such persons.
- 2003.6 Every mortgage broker, mortgage lender or seller who is originating or placing a loan secured by a lien instrument encumbering residential real property in the District of Columbia shall complete, execute and acknowledge a Form 205(b) Mortgage Broker/Lender Certification and Signature Page to Information Form and deliver it to the title company or person handling the loan settlement for attachment to the Form 205(b) General.
- 2003.7 The mortgage broker, mortgage lender or seller shall promptly provide copies of the completed form to each person related to the residential lien instrument and/or residential real property promptly upon receiving a request from such persons.
- 2003.8 Every mortgage broker or mortgage lender who is claiming an exemption from the license requirement under Section 3 of the Mortgage Lenders and Brokers Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Code § 26-1001 et seq.) or under Federal law, shall complete, execute and acknowledge a Form 205(b) Mortgage Broker/Lender License Exemption Certification to Information Form and deliver it to the title company or person handling the loan settlement for attachment to the Form 205(b) General.
- 2003.9 The mortgage broker or mortgage lender shall promptly provide copies of the completed form to each person related to the residential lien instrument and/or residential real property upon receiving a request from such persons.
- 2003.10 The noteowner or noteowner's agent for the noteowner who is the original owner of the note secured by a lien instrument encumbering residential real property in the District of Columbia shall complete, execute and acknowledge a Form 205(b) Noteowner or Noteowner's Agent Certification and Signature Page to Information Form and deliver it to the title company or person handling the loan settlement for attachment to the Form 205(b) General.
- 2003.11 The noteowner or noteowner's agent shall promptly provide copies of the completed form to each person related to the residential lien instrument and/or residential real property promptly upon receiving a request from such persons.
- 2003.12 If the noteowner or noteowner's agent has checked the "NO" line in item 6(b) of the Form 205(b) Noteowner or Noteowner's Agent Certification and Signature Page to Information Form to indicate that the lien instrument does not secure a home loan, then the noteowner or noteowner's agent shall complete, execute and acknowledge a Form 205(b) Noteowner or Noteowner's Agent Home Loan Exemption Certification to Information Form and deliver it to the title company or person handling the loan settlement for attachment to the Form 205(b) General.

- 2003.13 The noteowner or noteowner's agent shall promptly provide copies of the completed form to each person related to the residential lien instrument and/or residential real property promptly upon receiving a request from such persons.
- 2003.14 The borrower under the loan or owner of the residential real property in the District of Columbia encumbered by the lien instrument shall complete, execute and acknowledge a Form 205(b) Borrower or Owner Certification and Signature Page to Information Form and deliver it to the title company or person handling the loan settlement for attachment to the Form 205(b) General.
- 2003.15 The borrower or owner shall promptly provide copies of the completed form to each person related to the residential lien instrument and/or residential real property upon receiving a request from such persons.

2004 AUTHORIZED LIEN INSTRUMENT FORMS

- 2004.1 All notes secured by a deed of trust or mortgage on real property in the District of Columbia may be transferred by recording a certificate of transfer in the Recorder of Deeds office. The authorized Certificate of Transfer Form, attached in the Appendix as Form 208(f), shall be used to satisfy the requirements in Section 208 of the Act.
- 2004.2 All lien instruments securing a note that has been fully paid or fully satisfied or cancelled may be released as a lien on the real property in the District of Columbia by recording a Note Affidavit and the original note in the Recorder of Deeds office. The authorized Note Affidavit Form, attached in the Appendix as Form 218(b), shall be used to satisfy the requirements in Section 218(a) of the Act.
- 2004.3 A lien instrument securing a note that has been fully paid or fully satisfied or cancelled may be released as a lien on the real property in the District of Columbia by recording a certificate of satisfaction in the Recorder of Deeds office. The authorized Certificate of Satisfaction Form, attached in the Appendix as Form 218(d), shall be used to satisfy the requirements in Section 218(c) of the Act.
- 2004.4 A lien instrument securing a note which has been partially paid or partially satisfied or partially cancelled in a manner sufficient to entitle the owner to a release of a portion of the real property encumbered by the lien instrument may be released as a lien on the portion of real property in the District of Columbia by recording a Certificate of Partial Satisfaction in the Recorder of Deeds office. The authorized Certificate of Partial Satisfaction Without Note Attached Form, attached in the Appendix as Form 218(f), shall be used to satisfy the requirements in Section 218(e) of the Act.

- 2004.5 A lien instrument securing a lost, misplaced, or destroyed note which has been fully paid and satisfied or cancelled may be released as a lien on the real property in the District of Columbia by recording a release affidavit in the Recorder of Deeds office. The authorized Release Affidavit for Lost, Misplaced or Destroyed Note Form, attached in the Appendix as Form 218(h), shall be used to satisfy the requirements in Section 218(a) of the Act.
- 2005 SCHEDULE OF TRUSTEE AND ASSIGNEES FOR FORECLOSURE COMMISSIONS AND COMPENSATION**
- 2005.1 For all foreclosures conducted in the District of Columbia, no trustee or assignee for foreclosure may charge the borrower, owner and subordinate interest holder or receive from them more than the amounts provided in the Schedule of Trustee and Assignee for Foreclosure Commissions and Compensation provided in the Appendix as Form 309.
- 2006 NOTICE OF COMMENCEMENT OF FORECLOSURE FORM**
- 2006.1 The authorized Notice of Commencement of Foreclosure Form, attached in the Appendix as Form 502, shall be used to comply with the requirement in Section 502(c) of the Act that all foreclosure sales conducted under a power of sale contained in any lien instrument in the District of Columbia shall require the mailing, and the service of a Notice of Commencement of Foreclosure (Form 502) and the recording of the Notice of Commencement of Foreclosure (Form 502) in the Recorder of Deeds office.
- 2006.2 The attachments required to be sent with the Notice of Commencement of Foreclosure (Form 502) pursuant to § 502(d) of the Act shall not be required to be recorded with the Notice of Commencement of Foreclosure (Form 502) which is recorded in the Recorder of Deeds office.
- 2006.3 The title commitment attached to the Notice of Commencement of Foreclosure (Form 502) is for informational purposes only. No person is entitled to rely upon such title commitment except the person who requested and paid for the commitment and liability thereunder to such a person shall be as provided in the title commitment.
- 2007 AFFIDAVIT OF LOST NOTE AND INDEMNIFICATION, STATEMENT OF DEBT AFFIDAVIT, AND NOTICE OF OWNERS AND BORROWERS RIGHTS FORMS**
- 2007.1 The authorized Affidavit of Lost Note and Indemnification Form, attached in the Appendix as Form 502(b)(3), shall be used to comply with the requirement in

Section 502(d) of the Act that each Notice of Commencement of Foreclosure sent to a borrower or owner in the District of Columbia shall include the note or a lost note affidavit.

- 2007.2 The authorized Statement of Debt Affidavit Form, attached in the Appendix as Form 502(d)(2), shall be used to comply with the requirement in Section 502(d) of the Act that each Notice of Commencement of Foreclosure sent to a borrower or owner in the District of Columbia shall include a statement of debt affidavit by the notecowner or obligee.
- 2007.3 The authorized Notice of Owners and Borrowers Rights Form, attached in the Appendix as Form 502(d)(4), shall be used to comply with the requirement in Section 502(d) of the Act, for all residential lien instruments or lien instruments securing a home loan in the District of Columbia, the Notice of Commencement of Foreclosure sent to a borrower or owner shall include a notice of the owner's and borrower's rights upon the commencement of foreclosure.

2008 ADDITIONAL HOME BORROWER

- 2008.1 A lender shall not include an additional home borrower in underwriting a home borrower's ability to repay the home loan unless the lender separately obtains from the additional home borrower a confirmation in writing to the lender of such additional home borrower's expectation and commitment to make or substantially contribute to the scheduled payments and escrow payments for the home loan.
- 2008.2 An additional home borrower shall include, but is not limited to, a co-borrower, accommodation party, guarantor, indemnitor, and any person who is or will be directly liable to the lender for the repayment of the home loan.
- 2008.3 In underwriting an additional home borrower, the lender shall verify the additional home borrower's current and expected income, current obligations, employment status and other financial resources.
- 2008.4 The additional home borrower's equity in any residential real property owned and occupied by the additional home borrower may not be used to provide credit support for the home loan.
- 2008.5 An additional home borrower should execute the note with a clear statement of the capacity the additional home borrower is signing in, e.g., co-maker, accommodation party, guarantor, etc. There should be no uncertainty in the home loan documents of the additional home borrower's liability for the home loan.

2009 PRESUMPTION OF ABILITY TO PAY

[RESERVED]

2010 REFINANCING WITHIN EIGHTEEN MONTHS

2010.1 If any portion of the new home loan is used to pay-off or pay any portion of the principal balance of an existing lien instrument encumbering the residential real property, the new home loan shall be subject to Section 601(c) of the Act.

2011 LENDER ENCOURAGES OR RECOMMENDS DEFAULT ON EXISTING LOAN

2011.1 No lender shall encourage or recommend that a home borrower default on an existing loan or other debt.

2011.2 For purposes of § 2011.1, "default" shall include failure to make any payment when due, without relying on a grace period or late payment period, or failure to perform all the terms and conditions of such existing loan or other debt.

2011.3 A lender shall not encourage or recommend any action by the home borrower on existing loans or other debt that will create a risk of materially reducing the home borrower's credit rating, unless there are compelling reasons to do so.

2012 OVERCHARGING FOR A HOME LOAN

2012.1 The annual percentage rate of a loan shall not be deemed substantially greater than the annual percentage rate that the home borrower would have other qualified if the annual percentage rate is not more than three percent (3%) than the annual percentage rate of a similar loan product available with another lender. As used in § 2012.1, loan products are similar if they have substantially similar interest rates and fees, loan amounts, loan terms, loan-to-value ratios, underwriting guidelines, type of collateral, lock-in period, and borrower's creditworthiness.

2013 SENDING OF "RED FLAG" WARNING NOTICE

2013.1 The "Red Flag" Warning Notice, attached in the Appendix as Form 601(j), shall be used to comply with the notice requirement established in Section 601(j) of the Act.

2013.2 The requirement of sending Form 601(j) shall be satisfied if a mortgage broker, mortgage lender or other person sends the disclosure notice to the home borrower, whether or not it is sent on behalf of a specific lender.

2013.3 The sending of the "Red Flag" Warning may be by any means which will reasonably assure receipt by the home borrower, including but not limited to, personal delivery, facsimile delivery, delivery in electronic format over the Internet, or regular, certified or registered U.S. Mail with postage prepaid and a return receipt for certified or registered U.S. Mail. Unless the lender has been requested to send the disclosure notice to a different address by the home borrower, the "Red Flags" Warning shall be sent to the home borrower's address or facsimile number as listed on the home loan application.

2014 EXTENSION OPTION FOR CERTAIN BALLOON LOANS

2014.1 The following example shall be used as guidance for the required extension option provided in Section 601(l) of the Act:

A home loan closed and funded on July 1, 2001 has an initial principal amount of two hundred fifty thousand dollars (\$250,000), a twelve percent (12%) interest rate, scheduled monthly payments of principal and interest of two thousand six hundred thirty-three dollars and six cents (\$2,633.06) based on a twenty-five (25) year amortization schedule, excluding mortgage insurance premiums and escrow deposits for real estate taxes and property insurance premiums, and the lender's option to accelerate the maturity upon six (6) months' notice anytime after July 1, 2008, the seventh anniversary of the date of the note. Such a home loan must include the extension option described in Section 601(l) of the Act. The maximum amount of the scheduled payments of principal and interest during the extension option, excluding mortgage insurance premiums and escrow deposits for real estate taxes and property insurance premiums, is \$2,633.06 times $[1 + (84 \text{ monthly payments times } 0.0008333)]$ or two thousand eight hundred seventeen dollars and thirty-seven cents (\$2,817.37) per month. This equals approximately a one percent (1%) per annum increase in the allowable scheduled monthly payments of principal and interest. The maximum remaining term ends on July 1, 2036. Assuming the lender exercises the acceleration option effective July 1, 2008 and increased the scheduled payments the maximum amount while extending the maturity date until July 1, 2036, the new interest rate on the home loan would be fourteen and twenty-six hundredths percent (14.26%). If the original home loan had originally scheduled payments of principal and interest of two thousand five hundred seventy-one dollars and fifty-three cents (\$2,571.53) based on a thirty (30) year amortization schedule with all the other terms being the same, assuming the lender exercises the acceleration option effective July 1, 2008 and increased the scheduled payments the maximum amount while extending the maturity date until July 1, 2036, the new scheduled payments would be two thousand seven hundred fifty-one dollars and fifty-four cents (\$2,751.54) and the new interest rate on the home loan would be thirteen and thirty-

nine hundredths percent (13.39%). If the lender waited until after the seventh anniversary of the note to accelerate the maturity, no further increase in the scheduled payment would be permitted.

2015 PREDATORY LENDING VIOLATIONS AND REMEDIES

- 2015.1 The Mayor, the Corporation Counsel, or any home borrower to a home loan seeking recovery for a lender's violation of Section 601 of the Act, shall file a civil complaint in the Superior Court of the District of Columbia in accordance with the D.C. Superior Court Rules of Civil Procedure.
- 2015.2 The home loan shall not be required to be in default or in foreclosure in order for a complaint to be filed pursuant to § 2015.1.
- 2015.3 No action shall be brought pursuant to § 2015.1 more than eighteen (18) months after a home loan is paid or otherwise resolved.
- 2015.4 The limitation on punitive damages in Section 602(d)(5) of the Act shall not apply to predatory acts committed on or after July 3, 2002.

2016 ACTIONS AGAINST PERSONS WHO ACTUALLY CONDUCTED SETTLEMENT OF A HOME LOAN

- 2016.1 The person who actually conducts settlement for a home loan shall put in writing all fees and costs paid by the home borrower and identify the services to be performed by the person actually conducting the settlement for such fees and costs.
- 2016.2 A settlement statement, Form HUD-1 or equivalent, shall satisfy the requirement in § 2016.1 if it fully discloses the fees and costs and services to be performed and is signed by the home borrower.

2017 REGULATION OF PREDATORY LENDING ACTIVITIES

- 2017.1 The Commissioner may initiate an investigation of any person or entity if the Commissioner has reasonable cause to believe that the person or entity has engaged, is engaging, or may engage in one or more of the prohibited predatory lending activities as defined in Section 601 of the Act.
- 2017.2 All investigations shall be conducted in conformity with the requirements of D.C. Code § 26-702.01 (2001 ed.).
- 2017.3 Following completion of an investigation, the Commissioner may issue a final or temporary cease and desist order; assess penalties and fines; or enter into a formal agreement of voluntary compliance upon a finding that the person or entity has

engaged, is engaging, or may engage in one or more of the prohibited activities defined in section 601 of the Act.

2017.4 In determining the enforcement action under § 2017.3, the Commissioner may consider factors including, but not limited to, the following:

- (a) The nature and extent of the violation;
- (b) The harm incurred by the borrower;
- (c) The intent of the lender at the time of the alleged violation;
- (d) The amount of restitution provided by the lender;
- (e) The steps taken to cure the harm done;
- (f) The actions or inaction on the part of the lender; and
- (g) The actions on the part of the borrower.

2017.5 Any findings by the Commissioner of violations under section 601 of the Act shall be referred to the District of Columbia Office of the Corporation Counsel for further review and determination.

2018 JUDICIAL FORECLOSURE FORMS

2018.1 A borrower whose home loan is being foreclosed may request that the trustee or assignee for foreclosure pursue judicial foreclosure by using the authorized Demand For Judicial Foreclosure Form, attached in the Appendix as Form 702.

2018.2 A noteowner, beneficiary, mortgagee, or secured party responding to the borrower's request described as § 2017.1 in writing within ten (10) days of receipt of the borrower's request and choosing to accept the borrower's request and pursue a judicial foreclosure, may use the authorized Notice of Acceptance to Pursue Judicial Foreclosure Form, attached in the Appendix as Form 705(1).

2018.3 A noteowner, beneficiary, mortgagee, or secured party responding to the borrower's request described as § 2017.1 in writing within ten (10) days of receipt of the borrower's request and choosing to accept the borrower's request for judicial foreclosure, may use the authorized Notice of Failure to Satisfy Required Conditions Form, attached in the Appendix as Form 705(2) if the borrower has failed to satisfy the required conditions.

2018.4 A noteowner, beneficiary, mortgagee, or secured party responding to the borrower's request described as § 2017.1 in writing within ten (10) days of receipt of the borrower's request and choosing to deny the request and to seek an expedited hearing to determine if the requesting borrower is entitled to judicial foreclosure may use the authorized Notice of Denial and Seeking of Expedited Hearing Form, attached in the Appendix as Form 705(3).

2018.5 A noteowner, beneficiary, mortgagee, or secured party responding to the borrower's request described as § 2017.1 in writing within ten (10) days of receipt of the borrower's request and choosing to deny the request and to proceed with a power of sale foreclosure may use the authorized Notice of Denial and Proceeding With Power of Sale Foreclosure (Because Information Form Was Filed or Because Loan Was Not a Home Loan) Form, attached in the Appendix as Form 705(4).

2019 JUDICIAL FORECLOSURE PETITION FORM

2019.1 The authorized Judicial Foreclosure Petition Form, attached in the Appendix as Form 901, shall be completed and filed in order to commence a judicial foreclosure to foreclose a lien instrument pursuant to Section 901 of the Act.

2020 FORECLOSURE SALE FORMS AND INSTRUCTIONS

2020.1 The authorized Memorandum of Foreclosure Sale Form is attached in the Appendix as Form 1104(b) shall be used to satisfy the requirements in Section 1104(b) of the Act.

2020.2 The trustee/assignee or the attorney representing the trustee/assignee shall be responsible for drafting and sending the Memorandum of Foreclosure Sale to the accepted bidder, auctioneer and any attorney who represents the accepted bidder, within ten (10) days of the conclusion of the foreclosure sale auction.

2020.3 The accepted bidder and auctioneer shall review, sign and return the Memorandum of Foreclosure Sale to the trustee or assignee within ten (10) days of receipt from the trustee/assignee or his or her attorney.

2020.4 The Memorandum of Foreclosure Sale completed pursuant to § 2020.1 shall be sent to the accepted bidder, auctioneer, and any attorney who represents the accepted bidder by first class mail, postage prepaid, or by hand-delivery.

2020.5 The Memorandum of Foreclosure Sale shall contain the following information:

- (a) The accepted bidder's name and address; type of entity; and social security number or Internal Revenue Service tax identification number;
- (b) The name, address, and telephone number of the contact person for the accepted bidder;
- (c) The trustee's name;
- (d) The auctioneer's name and District of Columbia license number;

- (e) The accepted bid price;
- (f) The amount of deposit paid by the accepted bidder to the trustee or assignee for foreclosure;
- (g) The date, time and location of the foreclosure sale auction; and
- (h) Such other information required by the auctioneer.

- 2020.6 A Memorandum of Foreclosure Sale shall be deemed incomplete if it fails to contain any of the information required in § 2019.5.
- 2020.7 The Memorandum of Foreclosure Sale shall be deemed final and complete upon review and signature by the trustee/assignee, auctioneer, accepted bidder, and any attorney who represents the parties.
- 2020.8 A final and complete Memorandum of Foreclosure Sale shall constitute a binding agreement upon the accepted bidder, auctioneer, and trustee/assignee.
- 2020.9 No oral or written communications shall be incorporated by reference into the Memorandum of Foreclosure Sale unless specified in writing and agreed upon by the accepted bidder, auctioneer, and trustee/assignee.
- 2020.10 No amendment or revision shall be made to the Memorandum of Foreclosure Sale unless specified in writing and agreed upon by the accepted bidder, auctioneer, and trustee/assignee.
- 2020.11 Failure to comply with the terms of the Memorandum of Foreclosure Sale may constitute a breach of the agreement. Any party may seek monetary damages, rescission, specific performance, injunctions or any other relief that may be appropriate by filing a petition in the Civil Division of the Superior Court of the District of Columbia.

2021 CANCELLATION OF A FORECLOSURE SALE

- 2021.1 A noteowner, beneficiary, trustee, mortgagee, secured party, or assignee for foreclosure may cancel a foreclosure sale by using the authorized Notice of Cancellation of Foreclosure Sale (Specific Reason) Form, attached in the Appendix as Form 1108/1109.

2022 AUDIT OF FORECLOSURE SALE

- 2022.1 Within ninety (90) days from the conclusion of the foreclosure sale auction, the trustee or assignee shall send to the Auditor the following documents:

- (a) The original note certified by the noteowner. If the original note is unavailable, the trustee or assignee may send, as a substitute, a copy of the original note certified by the noteowner with a lost note affidavit and indemnity by the noteowner of the borrower, homeowner and trustee or assignee for foreclosure on a form approved by the Auditor;
- (b) The original recorded lien instrument and all amendments to the recorded lien instrument. If the original recorded lien instrument is unavailable, the trustee or assignee may send, as a substitute, a copy of the recorded lien instrument and all amendments evidencing their recordation among the land records as certified by the Recorder of Deeds;
- (c) The original recorded deeds of appointment of substitute trustee, resignations of trustee, or assignments for foreclosure. If the original recorded deed is unavailable, the trustee or assignee may send, as a substitute, a copy of the recorded deeds of appointment of substitute trustee, resignations of trustee, or assignment for foreclosure evidencing their recordation among the land records as certified by the Recorder of Deeds;
- (d) A copy of the Notice of Commencement of Foreclosure and a copy of any documents sent to the borrowers, homeowner, or subordinate interest holders, including their names and addresses used for mailing;
- (e) A title search of the real property updated through the date of the foreclosure sale auction. The title search must be in the form of an American Land Title Association commitment for title insurance;
- (f) An affidavit of mailing certifying that the Notice of Commencement of Foreclosure was mailed to or served on the borrowers, homeowners, and subordinate interest holders;
- (g) An affidavit of service certifying that the Notice of Commencement of Foreclosure was recorded with the Recorder of Deeds;
- (h) A copy of the foreclosure sale advertisement;
- (i) A certificate of publication from the newspapers that published the foreclosure sale advertisement;
- (j) The affidavits of compliance from the trustee or assignee for foreclosure, auctioneer, accepted bidder, and noteowner, beneficiary, mortgagee, or secured party;

- (k) The original Memorandum of Foreclosure Sale. If the original is unavailable, the trustee or assignee may send a copy of the Memorandum of Foreclosure Sale certified by the auctioneer;
- (l) A disclosure of any assignment of the purchase right by the original accepted bidder and whether such assignment is subject to recordation or transfer taxes.
- (m) A proposed form of deed of conveyance by the trustee or assignee for foreclosure;
- (n) The proposed distribution of gross sale proceeds based on information available to the trustee or assignee for foreclosure or other person submitting a claim to the sales proceeds and payment of all fees and costs, including copies of real estate tax bills, invoices for costs and services, and all necessary information available to the submitting person to verify the proposed distribution of gross sales; and
- (o) The amount of deficiency, if any, claimed by the noteowner, beneficiary, mortgagee, or secured party.

2022.2 The trustee or assignee shall pay the Auditor's fee, in the amount of three hundred dollars (\$300), at the same time documents are submitted to the Auditor pursuant to § 2022.1, but no later than ninety (90) days of the conclusion of the foreclosure sale auction.

2022.3 If the original or copy of the document requested is not in the possession of the trustee or assignee and the trustee or assignee has made good faith efforts to obtain a copy, the trustee or assignee shall indicate in writing to the Auditor the reason(s) for his or her inability to obtain the original or copy of the document.

2022.4 Failure to send the documents required by § 2022.1 and the Auditor's fee required by § 2022.2 shall make the foreclosure sale voidable by the Auditor. A foreclosure sale may be voided upon determination that the failure to send the document(s) was prejudicial to the borrower/homeowner.

2022.5 The Auditor shall send written notice, within fifteen (15) days, to the trustee or assignee, auctioneer, borrower, homeowner, and the noteowner, beneficiary, mortgagee, or secured party setting forth the reason(s) for voiding the foreclosure sale. The fifteen (15) day period shall begin on the 91st day after the conclusion of the foreclosure sale auction.

2022.6 The Auditor may, in his or her sole discretion, extend the ninety (90) day period for filing the documents and paying the Auditors fee upon a showing of good cause. Any request to extend the ninety (90) day period shall be sent in writing and prior to the expiration of the ninety (90) day period.

- 2022.7 If a foreclosure sale is voided, the noteowner, mortgagee, beneficiary or secured party may commence a *de novo* foreclosure sale by sending a new notice of commencement of foreclosure.
- 2023 **TRUSTEE OR ASSIGNEE FOR FORECLOSURE AFFIDAVITS**
- 2023.1 An affidavit of the trustee or assignee for foreclosure that the notice of commencement of foreclosure was mailed to the owners, borrowers, and subordinate interest holders shall be delivered to the Auditor. The authorized Affidavit That Notice of Commencement of Foreclosure was Mailed Form is attached in the Appendix as Form 1201(6)(a).
- 2023.2 An affidavit of the trustee or assignee for foreclosure that the notice of commencement of foreclosure was served on the owners, borrowers, and subordinate interest holders shall be delivered to the Auditor. The authorized Affidavit That Notice of Commencement of Foreclosure was Served Form is attached in the Appendix as Form 1201(6)(b).
- 2023.3 Affidavits of compliance from the trustee or assignee for foreclosure, the auctioneer, the accepted bidder, and one of the noteowner, beneficiary, mortgagee, or secured party shall be delivered to the Auditor. Each affidavit of compliance shall state that the person giving the affidavit has no actual knowledge of improper conduct of the foreclosure sale and shall disclose any affiliation among the persons giving the compliance affidavits. The authorized Affidavit of Compliance Form is attached in the Appendix as Form 1201(10).
- 2024 **AUDITOR'S REPORTS**
- 2024.1 The authorized Auditor's Report on Foreclosure Sale Procedures (Ratification), attached in the Appendix as Form 1205(aR), shall be used to confirm that all required documents were received in acceptable form; confirm that the identity of the grantee in the trustee's or assignee's for foreclosure deed; and ratify that all foreclosure sale procedures have been followed. NR), shall be used to confirm that all required documents were not received in acceptable form; confirm the identity of the grantee in the trustee's or assignee's for foreclosure deed; and state that all foreclosure sale procedures have not been followed and that the sale is not ratified and is void.
- 2024.3 The authorized Auditor's Request for Additional Information, attached in the Appendix as Form 1205(b), shall be used by the Auditor when additional information and evidence that the foreclosure sale procedures and rules were followed is necessary.
- 2024.4 The authorized Auditor's Preliminary Report on Foreclosure Sale Proceeds and Deficiency, attached in the Appendix as Form 1205(d), shall be used for the

Auditor's preliminary report on distribution of foreclosure sale proceeds to confirm that all the required documents were received in acceptable form; confirm that the identity of the grantee in the trustee's or assignee's for foreclosure deed; and confirm or modify that the proposed distribution of the foreclosure sale proceeds; and confirm or modify the amount of the proposed deficiency.

- 2024.5 The authorized Auditor's Final Report on Foreclosure Sale Proceeds and Deficiency, attached in the Appendix as Form 1205(h), shall be used for the Auditor's final report on distribution of foreclosure sale proceeds and deficiency to confirm that all required documents were received in acceptable form; confirm that the identity of the grantee in the trustee's or assignee's for foreclosure deed; and set forth the proposed distribution of the foreclosure sale proceeds and the amount of the proposed deficiency.
- 2024.6 The authorized Auditor's Supplementary Report on Foreclosure Sale Proceeds and Deficiency, attached in the Appendix as Form 1205(j), shall be used for the Auditor's supplementary report on distribution of foreclosure sale proceeds and deficiency to provide notice of the failure of the trustee or noteowner to adjust the distribution of foreclosure proceeds as required by the auditor's final report.
- 2025 **INSURANCE COMMISSIONER INSURANCE PLAN APPROVAL**
- [RESERVED]**
- 2026 **FORECLOSURE PREVENTION FUND**
- 2026.1 There is hereby established a Foreclosure Prevention Fund within the Department to provide grants for programs aimed to prevent foreclosures in the District of Columbia.
- 2026.2 Programs aimed to prevent foreclosures in the District of Columbia include training programs, workshops, and other activities as deemed appropriate by the Department.
- 2026.3 The Fund shall be funded through the ten percent (10%) monetary awards obtained from damage awards determined by the Superior Court from claims and litigation arising under section 601 of the Act.
- 2026.4 The Fund may be used by the Department to provide programs aimed to prevent foreclosures or to provide grants to programs aimed to prevent foreclosures.
- 2026.5 Grants under the Fund shall be available and awarded on a rolling basis to the extent of available funding.

- 2026.6 The maximum grant for each program under the Fund shall not exceed ten thousand dollars (\$10,000).
- 2026.7 The Department may increase the amount in § 2026.6 if it finds the following:
- (a) The additional amount is supported by available funding;
 - (b) The program could not be provided without the additional amount; and
 - (c) The program will provide a significant benefit to the residents of the District of Columbia.
- 2026.8 A non-profit organization is eligible to receive grants under this program if the organization is engaged in educating and training District of Columbia residents in the areas of homeownership, consumer credit, and financial literacy.
- 2026.9 In order to be eligible for a grant under the Fund, an applicant shall file an application with the Department for a grant.
- 2026.10 The application shall consist of the following information:
- (a) A description of the grant sought from the Fund, including the amount, and a description of the use of the grant proceeds;
 - (b) The name of the applicant, including officers and key employees;
 - (c) A description of the program;
 - (d) A description of the financing of the program;
 - (e) A description of the timeframe of the program;
 - (f) A pro forma projection of the revenues and expenses of the program; and
 - (g) Any other information required by the Department.
- 2026.11 Not later than thirty (30) days after the receipt of an application which meets the criteria set forth in § 2026.10 of these rules, the Department shall approve, in whole or in part, or disapprove, in whole or in part, the grant sought by the applicant.
- 2026.12 The Department shall consider the following factors in determining whether to approve an application:
- (a) The number of District residents who will benefit from the program;

- (b) Whether a similar program currently has a grant from the Fund;
- (c) The uniqueness and novelty of the proposed program; and
- (d) Whether there is a reasonable probability that the program will not be achieved without the grant.

2026.13 The Department may approve the grant in whole or in part based on one or more of the factors listed in § 2026.12.

2026.14 Prior to an award, and as a condition of an award, a potential recipient shall execute an agreement with the Department that shall ensure that the grant being awarded will be used consistent with the application upon which the grant was awarded.

2026.15 The grant agreement shall include any terms and conditions that the Commissioner finds necessary to further the purposes of the Foreclosure Prevention Fund.

**2027 DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS
HOME LOAN EXEMPTION PROGRAM**

2027.1 There is hereby established a Home Loan Exemption Program within the Department for the exemption of approved home loan exemption program from the provisions of the Act.

2027.2 Home loan exemption programs in the District of Columbia shall include financing, training programs and workshops for District residents, and other activities as deemed appropriate by the Department.

2027.3 The Home Loan Exemption Program shall be administered by the Department.

2027.4 A person, company or other entity is eligible to apply for an exemption under this loan program if they maintain a net worth exceeding ten million dollars (\$10,000,000), and have a loan program with a projected amount of five million dollars (\$5,000,000).

2027.5 In order to be eligible for an exemption under the Subprime Lending Loan program, an applicant shall file an application with the Department for an exemption.

2027.6 The application shall consist of the following information:

- (a) The name of the applicant, including officers and key employees;

- (b) A complete description of the loan program to be offered to District of Columbia residents including loss mitigation and underwriting standards;
- (c) A description and explanation of the mortgage loan products and variations (if any) to be offered under the loan program;
- (d) A description of the financing of the loan program;
- (e) A description of the timeframe of the loan program;
- (f) An explanation of how the loan program will provide a benefit to the residents of the District of Columbia and how it will otherwise serve the public interest;
- (g) A specific explanation of how the loan program will help prevent foreclosures and predatory lending abuses in the District of Columbia; and
- (h) Any other information required by the Department.

2027.7 Not later than ninety (90) days after the receipt of a complete application that meets the criteria set forth in § 2027.6 of these rules, the Department shall approve or disapprove the application.

2027.8 The Department will consider the following factors in determining whether to approve an application:

- (a) The number of District residents who will benefit from the loan program;
- (b) Whether a similar loan program currently has been approved;
- (c) The uniqueness and novelty of the proposed loan program; and
- (d) Information provided in § 2027.6.

2027.9 The Department may approve or disapprove the loan program based on one or more of the factors listed in § 2027.8 of these rules.

2027.10 The Department may extend the ninety (90) day period described in § 2027.7 of these rules by thirty (30) days to request additional information from the applicant during the initial ninety (90) day period.

2027.11 If the Department does not approve or disapprove of the application within the time period outlined in § 2027.7 of these rules, the application shall be deemed approved and the exemption shall be granted.

- 2027.12 A previously approved applicant may submit a complete application that varies specific terms and conditions of a previously approved loan program and is substantially similar to a previously approved loan program.
- 2027.13 The Department may revoke a previously approved loan program if the Department determines, after a public hearing, that the program does not benefit consumers and does not otherwise serve the public interest.
- 2027.14 The public hearing referred to in § 2027.13 shall be held in accordance with the District of Columbia Administrative Procedures Act.

2099 DEFINITIONS

- 2099.1 As used in these rules, the following terms and phrases shall have the meanings ascribed:
- (1) **Act** - D.C. Law 13-263, the Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000.
 - (2) **Auditor** - the Mortgage Foreclosure Audit Division of the Department of Banking and Financial Institutions.
 - (3) **District** - District of Columbia.
 - (4) **Mortgage Broker** - any person who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly accepts or offers to accept an application for a mortgage loan, solicits or offers to solicit a mortgage loan on behalf of a borrower, or negotiates or offers to negotiate the terms and condition of a mortgage loan on behalf of a lender.
 - (5) **Mortgage Lender** - any person who makes a mortgage loan to any person or engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to any other person. A mortgage lender shall not include the following:
 - (i) The Federal Home Loan Mortgage Corporation;
 - (ii) The Federal National Mortgage Association;
 - (iii) The Government National Mortgage Association; or
 - (iv) Any person engaged exclusively in the acquisition of all or any portion of a mortgage loan under any federal, state, or local government program of mortgage loan purchases.